

RESOLUTION NO. 09-53

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A BUS SHELTER EASEMENT AGREEMENT WITH THE HOME DEPOT USA, INC., A DELAWARE CORPORATION, WHEREIN THE CITY OF HIALEAH AND ITS LICENSEE ARE GRANTED AN EASEMENT FOR THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE AND REPAIR OF A TRANSIT OR BUS PASSENGER SHELTER AT TWO LOCATIONS: (1) THE FIRST LOCATION FRONTING THE SOUTH SIDE OF WEST 49 STREET, EAST OF WEST 16 AVENUE, HIALEAH, FLORIDA, HAVING DIMENSIONS OF 19 FEET IN LENGTH AND 2.50 FEET IN WIDTH, AND (2) THE SECOND LOCATION FRONTING THE EAST SIDE OF WEST 16 AVENUE, SOUTH OF WEST 49 STREET, HIALEAH, FLORIDA, HAVING THE DIMENSIONS OF 19.67 FEET IN LENGTH AND 3.00 FEET IN WIDTH, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1".

WHEREAS, the City of Hialeah finds it in the best interest of the health, safety, welfare of the community to provide transit or bus passenger shelter through agreements with private property owners that allow for the construction, operation, maintenance and repair of such shelters on private property fronting major city thoroughfares.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a bus shelter easement agreement with Home Depot USA, Inc., a Delaware corporation, wherein the City of


Hialeah and its licensee are granted an easement for the construction, installation, operation, maintenance and repair of a transit or bus passenger shelter at two locations: (1) The first location fronting the south side of West 49 Street, east of West 16 Avenue, Hialeah, Florida, having dimensions of 19 feet in length and 2.50 feet in width; and (2) The second location fronting the east side of West 16 Avenue, south of West 49 Street, Hialeah, Florida a copy of which is attached hereto and made a part hereof as Exhibit "1".

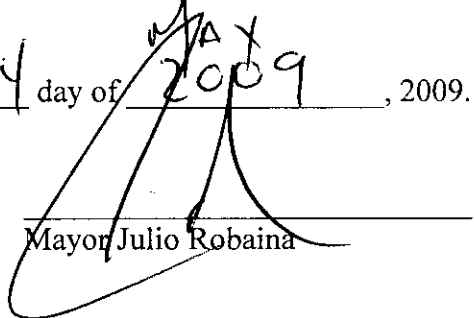
PASSED AND ADOPTED this 12th day of May, 2009.


Carlos Hernandez
Council President

Attest:

Approved on this 14 day of MAY, 2009.


Rafael E. Granado, City Clerk


Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

SA\WMG\LEGISLATIVE\RESOs 2009\bussheltereasementagreementthomedepot.docx

Resolution was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Gonzalez, Hernandez, Yedra voting "Yes" and Councilmember Garcia-Martinez absent.

Return to: (enclose self-addressed stamped envelope)

This Instrument Prepared by:

Thomas F. Mullin, Esquire
Ruden, McClosky, Smith,
Schuster & Russell, P.A.
200 East Broward Boulevard
15th Floor
Fort Lauderdale, Florida 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR PROCESSING DATA

BUS SHELTER EASEMENT AGREEMENT

THIS BUS SHELTER EASEMENT AGREEMENT ("Easement Agreement"), given this ____ day of _____, 2009, by THE HOME DEPOT USA, INC., a Delaware corporation, duly authorized to do business in the State of Florida, whose mailing address is c/o Real Estate Law, 2455 Paces Ferry Road, Bldg. C-20, Atlanta, GA, 30339-4024, (referred to herein as the "Grantor"), to THE CITY OF HIALEAH, FLORIDA, a political subdivision of the State of Florida, whose mailing address is Office of the City Clerk, 501 Palm Avenue, 3rd Floor, Hialeah, FL 33010 (referred to herein as the "City").

WHEREAS, Grantor owns certain real property situated in Miami-Dade County, Florida, legally described on Exhibit "A", attached hereto and made a part hereof ("Grantor Property"); and

WHEREAS, the City desires to use a portion of the Grantor Property for a public transit bus shelter; and

WHEREAS, Grantor has agreed to grant to the City an easement to be used by the City for a public transit bus shelter as further described herein.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and City hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Grantor hereby grants to City, its agents, successors and assigns, a perpetual non-exclusive easement in, on, over, under, through, and across the parcel of land located in Miami-Dade County, Florida, legally described on Exhibit "B" attached hereto and incorporated herein by reference (the "Shelter Easement Area"), to construct, erect, install, operate, maintain and repair a bus passenger shelter for the benefit of the general public with full rights of ingress and egress in, on, and over the Shelter Easement Area, which may include, but is not limited to, a

Exhibit "1"

transit passenger shelter, seating area, trash receptacles, bike racks, advertising, signage, lighting, landscaping, pavers, benches and any other use or activity which reasonably relates to and facilitates the public transit purposes described herein ("Easement"). The Easement granted hereunder shall be non-exclusive and subordinate to any public utility easement dedicated to the public, as the term "public utility" is defined in Section 177.031(7)(b), Florida Statutes. Grantor reserves the right to dedicate and/or grant easements in, upon, over, under, through and across the Shelter Easement Area for any lawful purpose.

3. Grantor agrees to allow any other person, firm or corporation, for the benefit of, and approved or authorized by, Grantee, to construct, erect, install, operate, maintain and repair the bus passenger shelter, and specifically Clear Channel Outdoor, Inc., as exclusive licensee of the right to install and operate transit or bus passenger shelters pursuant to Hialeah, Fla., Resolution 02-15 (March 21, 2002) or any successor agent that is granted a license by Grantee to install and operate transit or bus passenger shelters ("Licensee").

4. City's easement rights granted herein shall be exercised in a reasonable manner, in compliance with all laws and all permits and approvals, and in such manner as similar cities use substantially similar easements granted with respect to substantially similar property. City shall not: (i) use the easements granted herein in any manner that would create a nuisance; (ii) interfere (at any time) with the rights of Grantor, its successors or assigns (or any other party having the right to use or access any portion of the Grantor's Property, including, without limitation, Grantor's tenants, subtenants, customers and invitees, and the customers and invitees of such tenants and subtenants) with respect to Grantor's Property; (iii) interfere (at any time and in any way) with the use or enjoyment of, or operation of business upon, Grantor's Property by Grantor, its successors or assigns (or any other party having the right to use or access any portion of the Grantor's Property); (iv) interfere (at any time and in any way) with access to any portion of Grantor's Property or use of the driveways and parking areas thereon; or (v) extend the Easement granted by Grantor herein to any property or otherwise permit the use of Grantor's Property by any other property owner.

5. City agrees that it, its employees, contractors, agents, successors and assigns, shall use reasonable efforts to cause any and all maintenance, alterations and improvements within the Shelter Easement Area to be performed in a manner so as to minimize any interruption in Grantor's business. Specifically, (i) no staging or parking of contractor equipment or personal vehicles will be permitted in areas of the Grantor's parking lot where it may affect customer parking; (ii) staging shall not occur in such a manner that it impacts visibility of the Grantor's garden center or adjacent seasonal sales area; (iii) all construction debris shall be cleaned daily and disposed of offsite; and (iv) if any disruption of utility services is caused, City shall supply any and all necessary temporary utilities to maintain normal operational and life safety requirements of Grantor's business, including, but not limited to, fire watch approved by City should fire service be disrupted.

6. City or Licensee performing work in the Shelter Easement Area on behalf of City shall (i) provide to Grantor an insurance certificate evidencing the coverages maintained by City or Licensee, and (ii) cause Grantor to be added as an additional insured on such coverage(s). Such coverages for insurance shall include, but not be limited to, Fire and All Risk Property coverage, Workers' Compensation Insurance, and Commercial General Liability Insurance

Policy insuring against any and all liability for bodily injury or property damage in the amount of not less than Two Million Dollars (\$2,000,000.00) with respect to injuries or death attributable to any one occurrence.

7. Following completion of the bus shelter improvements, City and/or its Licensee, agents, employees, contractors, successors and assigns ("Third Parties"), at its sole cost and expense, shall maintain, repair and replace the improvements within Shelter Easement Area. Maintenance by City or Third Parties shall include the removal of any trash, garbage, debris or other waste material and the upkeep of all landscaping and grassy areas, including keeping the grounds free of dangerous conditions. Improvements may include but are not limited to transit passenger shelters, seating areas, trash receptacles, bike racks, advertising, signage, lighting, landscaping, pavers, benches and any other physical enhancement which reasonably relates to and facilitates the public transit purposes described in this Easement Agreement. If City or Third Parties, in the exercise of the rights granted herein or the use of the Easement granted herein causes any damage whatsoever to Grantor's Property or any improvements thereon (including, without limitation, landscaping, paving, striping, personal property, buildings, structures or other improvements), then City, at City's sole cost and expense, shall promptly replace or repair (or cause the replacement or repair of) the damaged portion of Grantor's Property and improvements within a reasonable period of time after the date such damage occurred. City shall not allow any mechanics' liens to attach to Grantor's Property (including the Shelter Easement Area) as a result of any activities of or on behalf of City, or in furtherance of the Easement granted hereby, and if any claims or liens are filed as a result thereof, City shall be obligated to bond off and/or satisfy said claims of liens in full within thirty (30) days from the date of said filing.

8. City and/or its Licensee agree that no advertising shall be posted or displayed within the Shelter Easement Area for Lowe's, Ace Hardware, True Value Hardware, and Sherwin Williams.

9. All of the benefits, burdens, easements and agreements contained herein shall constitute covenants running with the land, shall be binding upon the Grantor and shall inure to the benefit of the City, its successors and assigns, having or hereinafter acquiring any right title or interest in the Shelter Easement Area.

10. In the event Grantor or City fails or refuses to perform any term, covenant, or condition of this Easement Agreement, the sole remedy of either Grantor or City shall be the right of specific performance thereof; provided, however, that the parties do not intend nor shall this Easement Agreement be construed so as to require or compel the City to utilize the Shelter Easement Area for the purposes described herein and, no other party is intended to be a third party beneficiary of this Easement Agreement with any rights of enforcement.

11. This Easement Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Miami-Dade County, Florida.

12. No party shall be considered the author of this Easement Agreement since the parties hereto have participated in extensive negotiations and the drafting of this instrument so as

to achieve a final agreed upon instrument. Thus, the terms of this Easement Agreement shall not be strictly construed against one party in favor of the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions of this Easement Agreement and the remainder shall remain in full force and effect.

13. This Easement Agreement contains the entire understanding of the parties with respect to the subject matter hereof. No amendment, modification or termination of this Easement Agreement shall be effective unless it is in writing and signed by the Grantor and the City and recorded amongst the public records of Miami-Dade County, Florida.

14. Grantor hereby covenants with City that Grantor is lawfully seized of the Shelter Easement Area and that Grantor has good right and lawful authority to grant the Easement.

15. The parties hereto agree to execute such further documents as may be reasonably requested by the other to carry out the intent and purpose of this Easement Agreement.

(Remainder of Page Intentionally Left Blank)

5.

ATTEST:

(Seal)

CITY:

CITY OF HIALEAH, a municipal corporation
of the State of Florida.

By: _____
Rafael E. Granado, City Clerk

By: _____
Julio Robaina, Mayor

APPROVED AS TO FORM

By: _____
William M. Grodnick, City Attorney

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____,
2009, by Julio Robaina, the Mayor of the City of Hialeah, a municipal corporation of the State of
Florida. He is personally known to me or has produced _____ as
identification.

Notary Public, State of Florida

Typed or Printed Name of Notary

My Commission Expires:

EXHIBIT "A"

GRANTOR PROPERTY

PARCEL 1:

A portion of the North One-Half (N-1/2) of Section 2, Township 53 South, Range 40 East and a portion of TRACT "A" of Replat of ROCKMAN SUBDIVISION, as recorded in Plat Book 50, at Page 99, of the Public Records of Bada County, Florida, more particularly described as follows:

Begin at a point 1207.23 feet South of, as measured at right angles to the North line of said Section 2 and 35 feet East of the West line of the Northeast One-Quarter (NE-1/4) of said Section 2; thence run East parallel to the North line of said Section 2 for 325 feet to a point; thence run South 1 degree 24 minutes 10 seconds East, parallel to the West line of the Northeast One-Quarter (NE-1/4) of said Section 2 for 900 feet to a point; thence run West parallel to the North line of said Section 2 for 325 feet to a point that is 35 feet East of the West line of the Northeast One-Quarter (NE-1/4) of said Section 2; thence run North 1 degree 24 minutes 10 seconds West parallel to the West line of the Northeast One-Quarter (NE-1/4) of said Section 2 for 900 feet to the Point of Beginning.

Excepting therefrom the following described property:

From the Southwest corner of the above described Tract run North 1 degree 24 minutes 10 seconds West along the Westerly line of said Tract (which said line is co-incident with the Easterly Right-Of-Way line of West 16th Avenue) for a distance of 125 feet to a point; thence run Easterly along a line parallel to the Southerly line of said tract for a distance of 165 feet to a point; thence run South 1 degree 24 minutes 10 seconds East along a line parallel to the Westerly line of said tract for a distance of 125 feet to a point on the Southerly line of said tract; thence run Westerly along the Southerly line of said tract for a distance of 165 feet to the Point of Beginning.

EXHIBIT "B"

SHELTER EASEMENT AREA

SKETCH AND LEGAL DESCRIPTION, AND SPECIFIC PURPOSE SURVEY

LEGAL DESCRIPTION:

A PORTION OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 53 SOUTH, RANGE 40 EAST, CITY OF HIALEAH, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:









COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 2, THENCE SOUTH 01°43'53" EAST ALONG THE WEST LINE OF SAID NORTHEAST 1/4 FOR A DISTANCE OF 1207.59 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF N.W. 103rd STREET (W. 49th STREET HIALEAH NUMERICAL SYSTEM), SAID POINT ALSO BEING THE POINT OF INTERSECTION OF SAID SOUTH RIGHT OF WAY LINE WITH THE CENTER LINE OF W. 16th AVENUE; THENCE NORTH 89°39'58" EAST ALONG SAID SOUTH RIGHT OF WAY LINE OF N.W. 103rd STREET FOR A DISTANCE OF 110.75 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°39'58" EAST ALONG SAID SOUTH LINE A DISTANCE OF 19.00 FEET; THENCE SOUTH 00°20'02" EAST, 2.50 FEET; THENCE SOUTH 89°39'58" WEST, 19.00 FEET; THENCE NORTH 00°20'02" WEST, 2.50 FEET TO THE POINT OF BEGINNING.

SURVEYOR'S NOTES:

1. The Specific Purpose of this Survey is to locate the South Right of Way Line of N.W. 103rd Street (West 49th Street Hialeah Numbering System) for the purpose of creating the hereon described Easement. This is not a Boundary Survey.
2. The bearings shown hereon are referenced to the Dade County Public Works Department Right of Way Map recorded in Plat Book 83, Page 20 of the Public Records of Miami-Dade County, Florida. The Centerline of said N.W. 103rd Street lying in the Northeast 1/4 of Sec. 2, Twp. 53, Rg. 40 East having a Bearing of South 89°39'58" West.
3. The position of the Easement described hereon is in accordance with monumentation and topographic features located in the field by Biscayne Engineering Co., Inc. (B.E.C.) on 02/27/2009 together with data from Record Plats and from aforesaid Right of Way Map.
4. This Survey is valid only when all sheets are combined, forming the complete document.
5. No easements are shown hereon.
6. This site was not abstracted for Easements or Rights-of-Way of record other than those shown in the most recent Plat recorded in the Official Plat Books of Miami-Dade County. This Survey does not denote ownership of the lands described and shown hereon.

Not valid without the signature and raised Seal of the attesting Florida licensed Surveyor and Mapper.


SYMBOLS AND ABBREVIATIONS:

- P.B. - PLAT BOOK
PG. - PAGE
C. - CENTER LINE
SEC. - SECTION
TWP. - TOWNSHIP
RG. - RANGE
R/W - RIGHT OF WAY
P.O.C. - POINT OF COMMENCEMENT
P.O.B. - POINT OF BEGINNING
 - PALM TREE
 - SIGN
 - LIGHT POLL
 - BENCH
 - CONCRETE
 - ASPHALT
 - HEDGES
 - PROPOSED EASEMENT

THIS IS NOT A BOUNDARY SURVEY

I hereby certify that the attached "SPECIFIC PURPOSE SURVEY," was prepared in accordance with the Minimum Technical Standards for Surveying and Mapping, Chapter 61G17-6, as set forth by the Florida Board of Surveyors and Mappers, pursuant to Section 472.027 of the Florida Statutes.

ANDREW D. CONNER, VICE PRESIDENT, FOR THE FIRM
PROFESSIONAL SURVEYOR AND MAPPER
No. 5985 STATE OF FLORIDA

Drawing No. 2095-SS-24		BEC Ref.
F:\SURVEY\PROJECTS\780905\78474 City of Hialeah Bus Shelter\dwg\78474 2095-SS-24 & 25.dwg 3/5/2009 3:49:19 PM EST Layout 1		
PROJECT: EASEMENT FOR BUS SHELTER		
SURVEY DATE: 02/27/2009	CLIENT NAME: City of Hialeah	DRAWN BY: P.F.
REVISION DATE: 03/03/2009	BEC ORDER # 03-78474	
 BISCAYNE ENGINEERING COMPANY, INC. 629 WEST FLAGLER ST, MIAMI FL 33130		TEL (305) 324-7671, FAX (305) 324-1700 WWW.BISCAYNEENGINEERING.COM

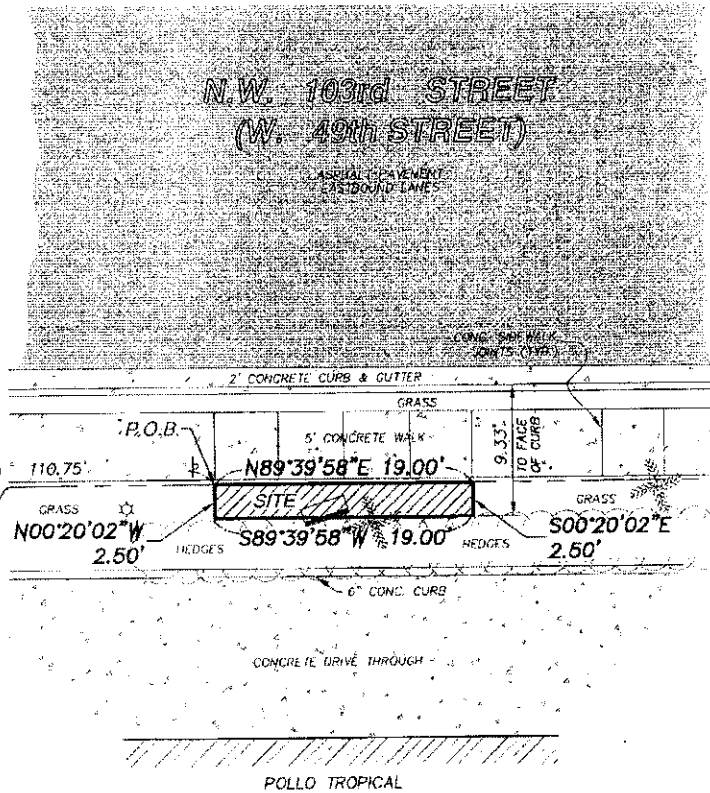
SKETCH AND LEGAL DESCRIPTION, AND SPECIFIC PURPOSE SURVEY



W. LINE OF NE. 1/4
SEC. 2-53-40

S. R/W LINE 103rd ST.
PER P.B. 83, PG. 20
N 89°39'58" E

W. 16th AVE.



NOT SUBDIVIDED

PART OF THE NE. 1/4 SEC. 2, TWP. 53, RGE. 40

Drawing No. 2095-SS-24

BEC Ref.

\\SURVEY\PROJECTS\78000\78474 City of Hialeah Bus Shelter\dwg\78474 2095-SS-24 & 25.dwg 3/5/2009 3:49:19 PM EST

Layout 1

PROJECT: **EASEMENT FOR BUS SHELTER**

SURVEY DATE: **02/27/2009**

CLIENT NAME: **City of Hialeah**

DRAWN BY: **P.F.**

REVISION DATE: **03/03/2009**

BEC ORDER # **03-78474**



BISCAYNE ENGINEERING COMPANY, INC.
529 WEST FLAGLER ST. MIAMI FL 33130

TEL (305) 324-7671, FAX (305) 324-1700
WWW.BISCAYNEENGINEERING.COM

SKETCH AND LEGAL DESCRIPTION, AND SPECIFIC PURPOSE SURVEY

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





COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 2, THENCE SOUTH 01°43'53" EAST ALONG THE WEST LINE OF SAID NORTHEAST 1/4 FOR A DISTANCE OF 1207.59 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF N.W. 103rd STREET (W. 49th STREET HIALEAH NUMERICAL SYSTEM), SAID POINT ALSO BEING THE POINT OF INTERSECTION OF SAID SOUTH RIGHT OF WAY LINE WITH THE CENTER LINE OF W. 16th AVENUE; THENCE NORTH 89°39'58" EAST ALONG SAID SOUTH LINE OF N.W. 103rd STREET FOR A DISTANCE OF 35.01 FEET TO THE EAST LINE OF THE WEST 35 FEET OF SAID NORTHEAST 1/4; THENCE SOUTH 01°43'53" EAST ALONG SAID EAST LINE FOR A DISTANCE OF 681.24 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 01°43'53" EAST ALONG SAID EAST LINE A DISTANCE OF 19.67 FEET; THENCE NORTH 88°16'07" EAST, 3.00 FEET; THENCE NORTH 01°43'53" WEST, 19.67 FEET; THENCE SOUTH 88°16'07" WEST, 3.00 FEET TO THE POINT OF BEGINNING.

SURVEYOR'S NOTES:

1. The Specific Purpose of this Survey is to locate the East Right of Way Line of W. 16th Avenue for the purpose of creating the hereon described Easement. This is not a Boundary Survey.
2. The bearings shown hereon are referenced to the Dade County Public Works Department Right of Way Map recorded in Plat Book 83, Page 20 of the Public Records of Miami-Dade County, Florida. The Centerline of said N.W. 103rd Street lying in the Northeast 1/4 of Sec. 2, Twp. 53, Rg. 40 East having a Bearing of South 89°39'58" West.
3. The position of the Easement described hereon is in accordance with monumentation and topographic features located in the field by Biscayne Engineering Co., Inc. (B.E.C.) on 02/27/2009 together with data from Record Plats and from aforesaid Right of Way Map.
4. This Survey is valid only when all sheets are combined, forming the complete document.
5. No easements are shown hereon.
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	- PALM TREE
	- SIGN
	- ELECTRIC WIRE PULL BOX
	- BENCH
	- CONCRETE
	- ASPHALT
	- HEDGES
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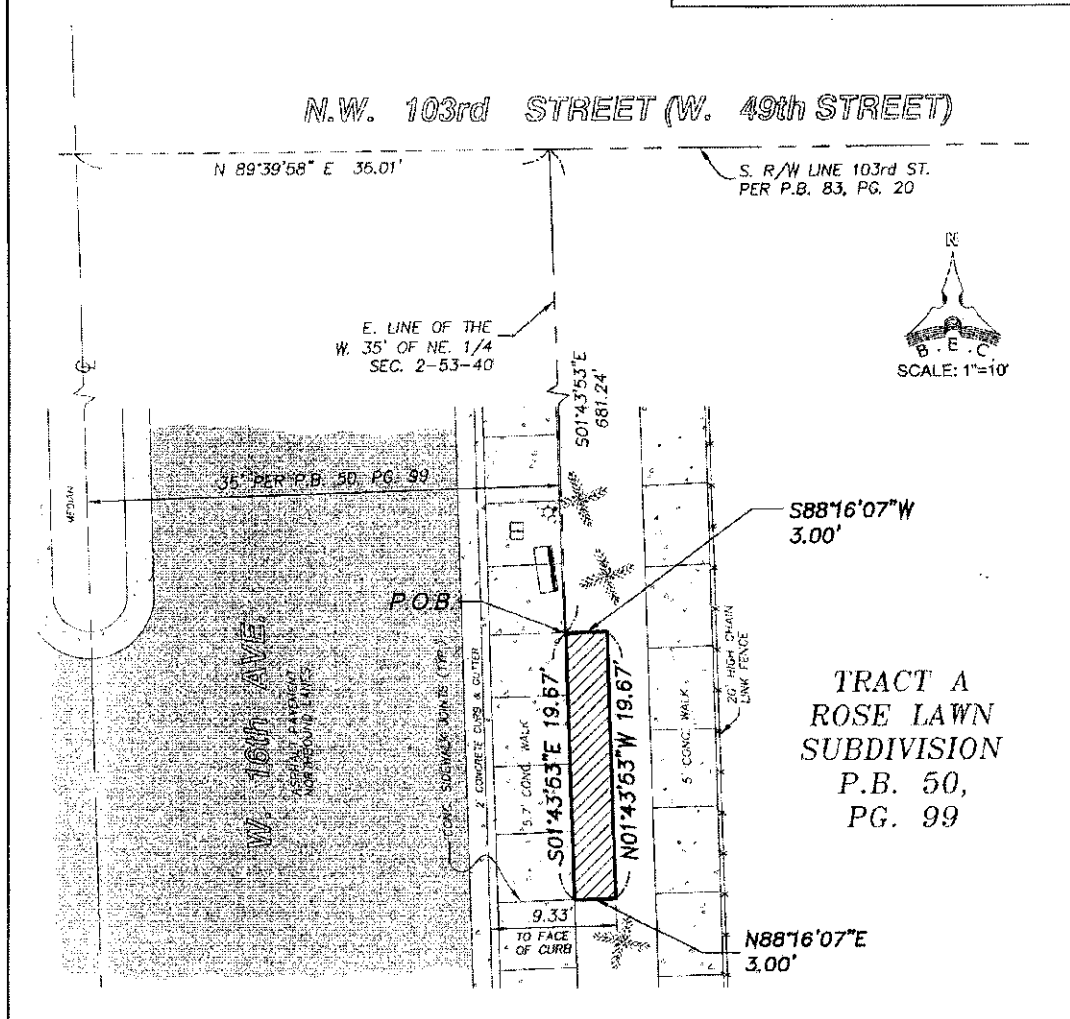
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I hereby certify that the attached "SPECIFIC PURPOSE SURVEY," was prepared in accordance with the Minimum Technical Standards for Surveying and Mapping, Chapter 61G17-6, as set forth by the Florida Board of Surveyors and Mappers, pursuant to Section 472.027 of the Florida Statutes.

ANDREW D. CONNER, VICE PRESIDENT, FOR THE FIRM
PROFESSIONAL SURVEYOR AND MAPPER
No. 5895 STATE OF FLORIDA

Drawing No. 2095-SS-25		BEC Ref.
<small>P:\SURVEY\PROJECTS\76000\578474 City of Hialeah Bus Shelter\dwg\78474 2095-SS-24 & 25.dwg 3/5/2009 3:49:19 PM EST layout: 1</small>		
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**SKETCH AND LEGAL
DESCRIPTION, AND
SPECIFIC PURPOSE SURVEY**



Drawing No. 2095-SS-25		BEC Ref.	
I:\SURVEY\PROJECTS\78300-1\78474 City of Hialeah Bus Shelter\dwg\78474 2095-SS-24 & 25.dwg 3/5/2009 4:13:43 PM EST			
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